

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

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U.S. District & Bankruptcy Courts  
Southern District of West Virginia

PENNY KENNEDY, and  
RAYMOND KENNEDY, individually  
and as guardians and next  
friends of  
TREVOR KENNEDY, an infant  
under the age of eighteen,

Plaintiffs,

v.

CIVIL ACTION NO. 2:03-0175

UNITED STATES OF AMERICA;  
COMMUNITY HEALTH FOUNDATION OF  
MAN, WEST VIRGINIA, INC.,  
and PLARIDEL TORDILLA,  
individually, et al.,

Defendants.

MEMORANDUM IN SUPPORT OF  
UNITED STATES MOTION TO DISMISS  
COMMUNITY HEALTH FOUNDATION OF MAN, INC.  
AND PLARIDEL TORDILLA, M.D.  
AND SUBSTITUTE THE UNITED STATES

Community Health Foundation of Man, West Virginia, Inc. ("CHF") and Plaridel Tordilla, M.D. are named defendants in an Amended Complaint that was filed on June 27, 2003. The Amended Complaint alleges, generally, that CHF and Plaridel Tordilla, M.D., were negligent when they failed to timely recognize, diagnose and appropriately treat and care for Trevor Kennedy, and failing to adequately monitor, supervise and investigate his medical condition. As a result of their negligence, plaintiffs allege that Trevor suffered extreme pain and partial paralysis. (Amended Complaint)

At all times relevant to the Amended Complaint, CHF and Plaridel Tordilla, M.D., an employee of CHF, were "deemed"

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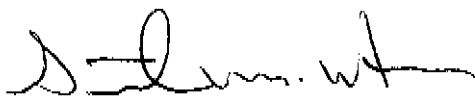
employees of the United States for purposes of 233(g) of the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act of 1992, as amended in 1995 ("the Act"). (Ex. 2) Under the Act, the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680, provides the exclusive remedy for medical and related services performed by employees of deemed entities while acting in the scope of their employment. 42 U.S.C. § 233(a).

In this case, the Attorney General, acting through his designee, the United States Attorney for the Southern District of West Virginia, has certified that the alleged actions of CHF and its employee, Plaridel Tordilla, M.D., were within the scope of their employment. (Ex. 1.) Upon said certification, this action must proceed as an action against the United States. 28 U.S.C. § 2679; 42 U.S.C. § 233(c).

WHEREFORE, the United States respectfully requests that CHF and Plaridel Tordiall, M.D. be dismissed and the United States be substituted in their place.

Respectfully submitted,

KASEY WARNER  
United States Attorney

  
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Assistant United States Attorney  
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CERTIFICATE OF SERVICE

I, Stephen M. Horn Assistant United States Attorney for the Southern District of West Virginia, hereby certify that service of the **MOTION TO DISMISS UNITED STATES FOR WANT OF SUBJECT MATTER JURISDICTION FOR FAILURE TO FILE A CLAIM PURSUANT TO THE FEDERAL TORT CLAIMS ACT** and **MEMORANDUM OF LAW** made this 30<sup>th</sup> day of June, 2003 by mailing a true copy through the United States mail, postage prepaid, to the following:


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